

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. Last fall, the petitioner applied for VHAP medical benefits for himself, but included his two children as

household members in his application. His benefits were calculated using his countable income of \$1153.64 per month. Because the Department had information from the mother's application that the children were "living with" her, the petitioner was considered the only person in his household. The maximum VHAP income for a family of one is \$1030 per month. The petitioner was notified that he was denied benefits because of excess income. If one or more of the petitioner's children had been considered to be "living with" him, he would have been eligible for VHAP benefits as a two or three person household.

3. The petitioner appealed that denial saying that it failed to recognize the realities of split custody households. While he was not applying for benefits for the children, he felt that they should be counted in his household for determining his financial eligibility. The Department responded that a child or both children could be counted in his household if the parents agreed in writing to designate him as the custodial parent for purposes of applying for public benefits. The Department says this is necessary in order to avoid the potential eligibility of both households for benefits for the children which could result in the payment of double benefits for the same child.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations adopted by the Department of Social Welfare provide that:

Financial Need of a VHAP Group

An individual must be a member of a VHAP group with countable income under the applicable income test to meet this requirement.

- A. VHAP group includes all of the following individuals if living in the same home:

. . .

- B. Children under age 21 of the applicant or spouse

. . .

The VHAP group shall not include any individual eligible for and Receiving ANFC benefits.

. . .

W.A.M. 4001.8

The above regulation requires the department to include all children under the age of twenty-one who are "living with" the petitioner in his VHAP group when he applies. The petitioner has claimed that the children are "living with" him because they do half of the time. His ex-partner has made the

same claim for the same reason. As the Department cannot cover the children in two households, that is make two premium payments for them, it must determine with which parent the children actually live, that is, which is their "primary" household, even though the parents have joint custody. See Fair Hearing No. 11,182. The Department already had a claim and was making payments to one parent who said the children were living with her. As such, the Department may not consider the children to be also "living with" the other parent. If the parents disagree about who is the "primary" parent, it is incumbent upon the Department to determine which household is "primary." This has traditionally been done by determining with which parent the children reside when they attend school. See Fair Hearings 9521 and 10,732.¹

At this point, the petitioner has been told that his ex-partner's claim that the children "reside" with her and her receipt of benefits prevents the Department from also including the children in his household. He has been advised that if the two families are agreeable they may designate in

¹ A decision should not have been made to deny the petitioner strictly on the ground that his wife had made the same claim with regard to the children. An investigation should have commenced as to what the situation was at that point. However, as the petitioner has claimed joint custody and has declared his unwillingness to designate a primary parent as of the time of the hearing, the result would undoubtedly have been the same if that information had been before the Department previously.

writing for which children they will take primary responsibility for purposes of applications for public benefits. If they cannot agree, the Department will have to decide itself which family is "primary" and only allow inclusion of the children in that family for purposes of applications. The petitioner has not indicated that he and his ex-wife disagree about which child would go with which parent in a primary designation. Rather, he disagrees that he should be required to make such a designation and proposes that the Department should be able to come up with a formula which splits benefits between joint custody households. His contention is not based upon the illegality of the current system but rather upon its lack of wisdom and fairness.

While it is not hard to see why it would be psychologically difficult for a parent to declare that he is not the primary parent when both parents are trying to share the children jointly, as a practical matter, split families are required to do this all of the time. For example, the parents cannot each claim the children as dependents when filing an I.R.S. claim but must choose which child each will claim. The same thing happens for state taxes, student scholarship applications and a host of other situations. It cannot be said that any of these situations are illegal.

Instead they promote a compelling interest in the federal or state government to assure that "double-dipping" does not occur with regard to deductions or benefits receivable based on number of children in a household. The petitioner has not presented any evidence that the hardship for him is so great as to require the government to make different formulas and laws for families who share children. The children may still get the benefits to which they are entitled under these formulas but they cannot be counted twice to increase the size of two households so as to make other adults eligible.

The petitioner was advised to talk with his ex-partner to see if they could come up with an agreement and to reapply. The Department has indicated that if the petitioner is designated the "primary" home for one of his children, he could be found eligible for VHAP benefits. If the parties cannot agree about this, the Department will have to determine which is the "primary" home. It cannot be said that the Department acted outside of its regulations in making this determination and so should be affirmed.

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